

APPEAL NO. 032272
FILED OCTOBER 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 29, 2003. The hearing officer determined that the appellant (claimant) is not entitled to third quarter supplemental income benefits (SIBs). The claimant appeals this determination on legal and sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to third quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)) establish the requirements for entitlement to SIBs. At issue was whether the claimant had a total inability to work during the qualifying period, pursuant to Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer considered the evidence and determined that the claimant failed to provide a narrative which specifically explains how the injury caused a total inability to work, and that other records show that the claimant is able to return to work in some capacity during the qualifying period. Contrary to the claimant's assertion, the record reflects that the hearing officer did not give "presumptive weight," as that term is used in Section 408.151 and Rule 130.110, to the reports of the carrier's independent medical examination doctor. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant appears to argue that he is entitled to third quarter SIBs, as a matter of law, because the carrier failed to timely send him a copy of the Application for [SIBs] (TWCC-52) as required by Rule 130.104(b). We have held that Rule 130.104(b) does not require the carrier to pay for any quarter of SIBs for which it did not provide a TWCC-52. Texas Workers' Compensation Commission Appeal No. 032218, decided October 14, 2003. Accordingly, the claimant is not entitled to third quarter SIBs on that basis.

The claimant also asserts that the hearing officer engaged in an improper *ex parte* communication with the carrier, when the hearing officer considered the carrier's proposed findings of fact and conclusions of law. Rule 142.3(a) provides, in pertinent part, "No person...may communicate, either directly or indirectly with the hearing officer regarding any facts, issues, law or rules relating to the benefit [CCH] after the hearing

has been set, and until all administrative and judicial remedies have been exhausted... except where the communication is written and delivered to all parties, as provided by Rule 142.4 of this title.” Rule 142.4, in turn provides, in pertinent part, “A party who sends a document relating to a benefit [CCH] to the [Texas Workers’ Compensation Commission] shall also deliver copies of the document to all other parties, or their representatives or attorneys.” (Emphasis added). We note that the hearing officer invited both parties to submit proposed findings of fact and conclusions of law after the close of the hearing in this case. The carrier responded to this request and copied the claimant’s attorney of record. Accordingly, we perceive no error.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge